SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 422.

THE UNITED STATES OF AMERICA AND CLIFFORD B. ACKERLY, EXECUTOR OF WILLIAM W. MERRIAM, DECEASED, PLAINTIFFS IN ERROR,

vs.

J. HENRY PERKINS, COUNTY TREASURER OF SUFFOLK COUNTY, NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

INDEX.

	Original.	Print.
Transcript on appeal to court of appeals	a	1
Statement	1	1
Petition of executor	2	1
Schedule A. Description of property	4	2
Will of William W. Merriam	4	2
Order appointing appraiser, etc	5	3
Report of appraiser	6	3
Notice of filing appraiser's report	10	6
Affidavit of Usher B. Howell	11	6
Decree assessing and fixing tax, May 22, 1893	12	6
Notice of appeal of United States to surrogate	13	7
Notice of appeal of executor to surrogate	14	7
Decree of surrogate, September 5, 1893	16	9
Order denying motion to vacate decree	17	9
Notice of appeal of United States to general term	18	10
Notice of appeal of executor to general term	19	10
Affidavit of no opinion	20	11
Decree of general term, December 1, 1893	21	11
Decree of special term, December 18, 1893	22	12
Notice of appeal of United States to court of appeals	23	12
Notice of appeal of executor to court of appeals	24	13
Clerk's certificate	25	13

	Original.	Print.
Remittitur from court of appeals	26	14
Judgment on remittitur, March 31, 1894	30	15
Opinion of court of appeals	32	16
Writ of error	35	18
Citation	37	19
Proof of service of citation	38	19
Clerk's certificate	39	19

a [Court of appeals from second judicial department. In the matter of the appraisal for taxation of the estate of William W. Merriam, deceased. Case on appeal. Jesse Johnson, attorney for the United States, appellant. Geo. F. Stackpole, attorney for Clifford B. Ackerly, executor, appellant. Timothy M. Griffing, attorney for the county treasurer of Suffolk County, N. Y., respondent.]

1 N. Y. supreme court, second department.

In the matter of the appraisal for taxation of the estate of William W. Merriam, deceased. 2

William W. Merriam died on the 30th day of January, 1889, leaving a will, which was admitted to probate by the surrogate of Suffolk County, and by which he devised and bequeathed all his estate, real and personal, to the United States Government. 3

The executor applied to the surrogate of Suffolk County to fix the tax, if any, which the estate was liable to pay under the law for taxing inheritances and legacies.

The surrogate determined that the estate was liable to pay a tax of $3,964.23.

The United States Government and the executor both appealed from such determination to the surrogate under the statute, and the surrogate made an order confirming the tax. The Government and 4 the executor appealed to the general term from such order of confirmation.

At the same time the United States Government moved before the surrogate to set aside the whole proceeding for appraisement and determination of the tax, which motion was denied.

The Government appealed to the general term from the order denying such motion.

2 Surrogate's court, Suffolk County. 5

In the matter of the taxation under chapter 483 of the laws of 1885 of the estate of William W. Merriam, deceased. 6

To the Hon. Nathan D. Petty, surrogate of the county of Suffolk:

The petition of Clifford B. Ackerly respectfully shows:

That he is the executor duly qualified of the last will and testament of William W. Merriam, late of the town of Brookhaven, in the county of Suffolk and State of New York, deceased, who died in said county on the 30th day of January, 1889. That the estate of 7 said decedent exceed s$500 in value, and that some part thereof, as he is advised, is subject to the tax imposed by chapter 483 of the laws of 1885, and the acts amendatory thereof.

That by the said will all the estate of said deceased was devised and bequeathed to the Government of the United States.

That the said deceased at his death was the owner of certain real estate situated at Jamesport, in the town of Riverhead, in said county 8 of Suffolk, and bounded as follows: Northerly by the highway, easterly by the land of Samuel Payne, southerly by the land of said Samuel Payne, and westerly by the land of Charles H. Payne, con-

taining by estimation one acre, be the same more or less. And was also owner of another piece of land in this county described in Schedule A, hereto annexed.

That, as the petitioner is advised and believes, the said real
9 3 estate does not pass under the will to the Government, but as intestate property it descends to the heirs at law of the said deceased.

The *the* said deceased left real estate also in the State of Massachusetts, and your petitioner is advised that the last said real estate not being in this State is not subject to taxation.

That the deceased left no widow or descendant, but his only heirs at law are Eleanor S. Woods, Harriet N. Hosley, and Elizabeth W. Merriam, all full sisters, and Ruth W. Lawton, a half sister, all of full age, and all residing at Springfield, Hampden Co., Massachu-
10 setts.

And that the only legatee of devisee named in the said will is the Government of the United States.

Wherefore your petitioner prays that some competent person may be appointed to appraise the estate of said decedent as provided in said act, and that he be required to make a report in writing of his appraisement and of such other facts in relation thereto as will be likely to enable or assist the said surrogate to assess and fix the cash
11 value of so much of said estate as may be subject to the tax imposed by said act, and the tax to which the same is liable, and that the said appraiser be required to file the said report in the office of said surrogate with all convenient speed.

CLIFFORD B. ACKERLY, *Executor.*

SUFFOLK COUNTY, *ss:*

12 Clifford B. Ackerly, the petitioner in the foregoing petition named, being duly sworn, says that the said petition is true to his knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

CLIFFORD B. ACKERLY.

Sworn this 30th day of January, 1893, before me.

USHER B. HOWELL,
Notary Public.

13 4 SCHEDULE A.

All that certain piece or parcel of land situate at Manorville, town of Brookhaven, Suffolk County, and described as follows: Commencing at a stake at the northwesterly corner of the land hereby conveyed, and running north, forty-three degrees forty-five minutes (43° 45′) east, two chains and fifty-two links, to the land of George R. Raynor; thence southerly by said land to the centre of the high-
14 way leading from Manor to Wading River; thence westerly along the centre of said highway to a line running north, forty-six degrees forty-five minutes (46° 45′) west, to the point or place of beginning; thence northerly along said last-mentioned line to said point or place of beginning, said land being bounded southerly by the highway,

westerly and northerly by the land of Andrew B. Lane, and easterly by the land of George R. Raynor, containing about fifty-two and a half (52½) square rods. 15

Will.

In the name of God, amen. I, William W. Merriam, of Manorville, town of Brookhaven, county of Suffolk and State of New York, being of sound mind and memory, and considering the uncertainty of this frail and transitory life, do therefore make, ordain, publish, and declare this to be my last will and testament, that is to say : 16

First. After all my lawful debts are paid and discharged, I give and bequeath all my property and estate, real and personal, to the Government of the United States of America. Likewise, I make, constitute, and appoint Clifford B. Ackerly, of Riverhead, N. Y., to be executor of this my last will and testament, hereby revoking all former wills by me made.

In witness whereof I have hereunto subscribed my name
5 and affixed my seal the eighteenth day of May, in the year of 17
our Lord one thousand eight hundred and eighty-three.

WILLIAM W. MERRIAM. [L. S.]

The above-written instrument was subscribed by the said William W. Merriam in our presence, and acknowledged by him to each of us, and he at the same time declared the above instrument, so subscribed, to be his last will and testament, and we, at his request, have signed our names as witnesses hereto in his presence and in the presence of each other, and written opposite our names our respective 18
places of residence.

B. K. PAYNE,
Residing at Riverhead, Suff. Co., N. Y.
JOHN T. LINNEN,
Residing at Baiting Hollow, Suff. Co., N. Y.

At a surrogate's court, held in and for the county of Suffolk, at the surrogate's office in Riverhead, on the 30th day of January, one thousand eight hundred and ninety-three. 19

Present, Nathan D. Petty, surrogate.

In the matter of the appraisal for taxation of the estate of William 20
W. Merriam, deceased.

On reading and filing the petition of Clifford B. Ackerly, executor of William W. Merriam, deceased, praying for the appointment of some competent person as appraiser under and in pursuance of the law to tax gifts, legacies, and inheritances, and on motion of James H. Tuthill, attorney for the petitioner,

6 It is ordered that Usher B. Howell be, and he is hereby, 21
appointed such appraiser, and he shall make a report in writing of his appraisement of said estate, together with such other facts and

circumstances as will be likely to enable or assist the said surrogate to properly assess and fix the cash value of so much of said estate as may be subject to the tax imposed by the aforesaid act and the tax to which the same is liable.

And it is further ordered, adjudged, and decreed that the said
22 appraiser give to Hon. W. H. H. Miller, Attorney-General of the United States, Hon. Simon W. Rosendale, attorney-general of the State of New York, and J. Henry Perkins, county treasurer of Suffolk County, New York, and to each of the parties named in the said petition, at the residence or address stated therein, at least sixteen days' notice by mail of the time and place he will appraise the property of said estate, and at such time he shall appraise the same at its fair market value, and the said appraiser shall file his said report in
23 the office of the surrogate of the county of Suffolk with all convenient speed.

NATHAN D. PETTY, *Surrogate.*

Surrogate's court, Suffolk County.

24 In the matter of the collateral inheritance tax upon the estate of William W. Merriam, deceased.

To the Surrogate of Suffolk County:

Pursuant to an order of this court made herein on the 30th
25 7 day of January, 1893, by which I was appointed an appraiser to appraise all the property which passed by the will of said William W. Merriam, deceased, liable to taxation under chapter 483 of the laws of 1885 and amendments thereto, said property consisting of stocks, securities, bank deposits, and real estate, as noted below:

I, the undersigned, as such appraiser do respectfully report: That I was duly sworn as per the affidavit hereto annexed; that on the 30th day of January, 1893, I appointed the 16th day of February,
26 1893, at 11 o'clock in the forenoon, at the Riverhead Savings Bank, corner Griffing avenue and Main street, N. Y., as the time and place to make the appraisement mentioned in said order, and gave the notices required in said order as to the time and place of such appraisement by mail on the 31st day of January, 1893, to the following-named persons, to wit: Mrs. Eleanor S. Woods, Mrs. Harriet N. Hosley, Miss Elizabeth W. Merriam, and Mrs. Ruth W. Lawton, sisters of said deceased, and all residing at Springfield, Mass.; Hon. W. H. H. Miller, Attorney-General of the United States; Hon.
27 Simon W. Rosendale, attorney-general of the State of New York, and J. Henry Perkins, county treasurer of Suffolk County, N. Y.

That none of the parties named, to whom the required notice was given as above stated, appeared at the time and place appointed, and

that I then proceeded to appraise the value of the said estate as follows:

	Par value.	Market value.
200 shares N. Y. Central R. R., @ 109	$27,000	$29,430
62 shares N. Y., N. H. & Hartford R. R., @ 250	6,200	15,500
74 shares Boston & Albany R. R., @ 202	7,400	14,948
30 shares Springfield F. & M. Ins. Co., @ 228	3,000	6,840
70 shares ($50 each) Traders' Nat'l Bank of Rochester, N. Y., @ 350	3,500	12,250
1 div. of the Traders' Nat'l Bank of Rochester, N. Y., due but unpaid	210	210
1 div. of the Boston & Albany R. R., due but unpaid	148	148
CHECKS.		
37th div. ck. N. Y., N. H., & Hartford on Chem. Nat'l, N. Y	$155	$155
67th div. ck. N. Y. Central on Chem. Nat'l., N. Y	270	270
80th div. ck. Spfd. F. & M. Ins. Co., on 3d Nat. of Spfd	150	150
1 ck. of est. C. Merriam on Pynchon Nat'l of Spfd., to W. W. M	400	400
1 ck. of est. C. Merriam on Pynchon Nat'l of Spfd., to W. W. M	148.92	148.92
Amounts forwarded	$18,581.92	$80,449.92
Unpaid interest in his father's estate:		
1st O. I. & W. bonds, @ 70	1,045	731.50
2d O. I. & W. bonds, @ 40	495	198
BANK ACCOUNTS.		
Amt. due from Deep River (Conn.) Savings Bank	530.53	530.53
Amt. due from Essex (Conn.) Savings Bank	1,797.37	1,797.37
Amt. due from Savings Bank of New Britain, Conn	213.30	213.30
Amt. due from Riverhead Savings Bank, N. Y	3,060	3,060
Amt. due from Sag Harbor Savings Bank, N. Y	730.01	730.01
Amt. due from Southold Savings Bank, N. Y	497.44	497.44
Amt. due from Union Dime Savings Bank, N. Y	238.96	238.96
Amt. due from Dry Dock Savings Bank, N. Y	119.46	119.46
Amt. due from Seaman's Savings Bank, N. Y	416.18	416.18
Amt. due from Greenwich Savings Bank, N. Y	1,318.54	1,318.54
Amt. due from Metropolitan Savings Bank, N. Y	573	573
Amt. due from Williamsburgh Savings Bank, N. Y	347.42	347.42
Amt. due from Brooklyn Savings Bank, N. Y	350.80	350.80
Amt. due from N. Y. Savings Bank, N. Y	259.74	259.74
Amt. due from Bank for Savings, N. Y	1,038.62	1,038.62
Cash found on the person of deceased	20.40	20.40
Personal effects, etc. (sold at public auction for)	124.96	124.96
Real estate at Franklinville, N. Y	1,000	1,000
Real estate at Manor, N. Y	35	35
Total	$62,793.65	$94,051.15

I further report that the stocks above named, the 62 shares of N. Y., N. H. & Hartford R. R., the 74 shares of Boston & Albany R. R., and the 30 shares of Springfield Fire & M. Ins. Co., appraised in the aggregate at $37,288, are stocks of incorporated companies in other States of the Union.

I further report that I appraise the debts paid and the expenses of temporary administration at $2,281.55

And the estimated expenses of settling the estate, including the other debt, at $11,450

Adding to these items the real estate (if that does not pass under the will), amounting to $1,035

The total to be deducted is $14,766.55

Deducting this total from the amount of the appraised value $94,051.15

The amount liable to tax is $79,284.60

March 11, 1893.

USHER B. HOWELL, *Appraiser.*

37 10 Surrogate's office, Suffolk County, N. Y.

38 In the matter of the taxation of the estate of William W. Merriam, deceased.

39 Please to take notice that the appraiser's report herein is filed this day, and that from said report I shall, on the 27th day of March, 1893, at 1 o'clock p. m., fix the tax to which the said estate is liable.

Dated Riverhead, March 11, 1893.

NATHAN D. PETTY, *Surrogate.*

To Hon. RICHARD OLNEY,
Attorney-General of the United States.

40 To J. HENRY PERKINS,
County Treasurer of Suffolk Co., N. Y.

41 11 Surrogate's court, Suffolk County, ss.

In the matter of the taxation of the estate of William M. Merriam,
42 deceased.

COUNTY OF SUFFOLK, *ss:*

Usher B. Howell, being duly sworn, says that he is over 21 years of age, and resides at Riverhead, N. Y.; that on the 11th day of March, 1893, deponent served a copy of the notice hereto annexed upon Hon. Richard Olney, Attorney-General of the United States,
43 and a copy upon J. Henry Perkins, esq., county treasurer of Suffolk County, by depositing the same properly enclosed in a post-paid wrapper, in the post-office at Riverhead, aforesaid, one directed to said Hon. Richard Olney, Attorney-General of the United States, at his residence in the city of Washington, D. C., and one directed to J. Henry Perkins, esq., county treasurer of Suffolk County, New York, at his residence in Riverhead, New York, between which places there then was and now is a regular daily communication by
44 mail.

USHER B. HOWELL.

Sworn to before me this 27th day of March, 1893.

HARRY B. HOWELL,
Notary Public, Suffolk Co.

45 12 At a surrogate's court, held in and for the county of Suffolk, at the surrogate's office in Riverhead, on the 22d day of May, 1893.

Present, Hon. Nathan D. Petty, surrogate.

In the matter of the appraisal for taxation of the estate of William
46 W. Merriam, deceased. Decree assessing and fixing tax.

The surrogate of the county of Suffolk, having heretofore appointed Usher B. Howell, esq., appraiser under and in pursuance of the col-

lateral inheritance tax acts, to appraise the property of William W. Merriam, deceased, and the said appraiser having made and filed his report in the office of the said surrogate on the 11th day of March, 1893, and the matter having been duly adjourned to this time, and 47
James H. Tuthill appearing for the executor herein, and Jesse Johnson appearing for the United States Government, and T. M. Griffing, esq., appearing for the county treasurer of Suffolk County and for the State comptroller,

It is ordered that the said report be, and the same hereby is, approved and confirmed, and the cash value of the property of said William W. Merriam, deceased, which is subject to the tax imposed by the said act, and the tax to which the same is liable, are hereby 48
assessed and fixed as follows:

The cash value of the personal property of the said William W. Merriam, deceased, at the time of his decease, was $79,284.60, and the tax to which the same is liable to be paid by the United States Government, the sole legatee, is $3,964.23.

And the appraiser's fees are hereby fixed at $48.

NATHAN D. PETTY, *Surrogate.*

13 Surrogate's court, Suffolk County. 49

In the matter of the appraisal for taxation and assessment of tax on the estate devised by William W. Merriam, deceased. 50

You will please take notice that the United States of America hereby appeals to the surrogate of Suffolk County from the appraisement made in the above-entitled matter by Usher B. Howell, appraiser appointed under the provisions of chapter four hundred and eighty-three of the laws of 1885, and the acts amendatory thereof, and from the assessment of tax made thereon by Hon. Nathan D. Petty, the surrogate of the county of Suffolk, which 51
assessment appears by an order or decree made by said surrogate, dated the 22d day of May, 1893; and the United States of America hereby appeals from each and every part of said appraisement and assessment, and from so much of the same as decides that the United States of America is liable to pay the sum of $3,964.23, or any part of the same, as a tax or otherwise.

The grounds on which this appeal is taken are: That there is no authority or power given to assess any tax or charge on property 52
devised to the United States of America, and that the State of New York has no jurisdiction or authority to impose any tax, or the tax here in question, on property of the United States, or on property devised to the United States, or any act of devise by which property is devised or comes to the United States; and because the law under which said appraisement and assessment purport to be made and the acts aforesaid were repealed before the said appraise-
14 ment and assessment; and because the United States is a sov- 53
ereign government, and its property, and property coming to

it, are not subject to the provisions of said acts or the taxing power of the State of New York.

Dated Brooklyn, July 19, 1893.

Yours, etc., JESSE JOHNSON,
Attorney for the United States of America and United States Attorney for the Eastern District of New York.

54 To JOSEPH M. BELFORD, Esq.,
The Clerk of the Surrogate's Court, Suffolk County.
T. M. GRIFFING, Esq.,
Attorney for the County Treasurer of Suffolk County, and for Frank Cambell, the Comptroller of the State of New York.

55 Surrogate's court, Suffolk County.

In the matter of the appraisal for taxation and the assessment of tax
56 on the estate of William W. Merriam, deceased.

You will please take notice that Clifford B. Ackerly, the executor of the last will and testament of said deceased, hereby appeals to the surrogate of Suffolk County from the appraisement made in the above-entitled matter by Usher B. Howell, appraiser, appointed under the provisions of chapter four hundred and eighty-three
57 15 of the laws of 1885 and the acts amendatory thereof; and from the assessment and determination of tax made thereon by Hon. Nathan D. Petty, the surrogate of the county of Suffolk, which assessment and determination appears by an order or decree made by said surrogate the 22d day of May, 1893.

And the said Ackerly, executor as aforesaid, appeals from each and every part of said appraisement and assessment and determination, and from so much of the same as decides that the United States of America is liable to pay the sum of $3,964.23, or any part of the
58 same, as a tax or otherwise.

The grounds on which this appeal is made are: That there is no authority or power given to assess any tax or charge on property devised or bequeathed to the United States of America, and that the State of New York has no jurisdiction or authority to impose any tax, or the tax here in question, on property of the United States, or on property devised or bequeathed to the United States, or on any act or devise or bequest by which property is devised or bequeathed or comes
59 to the United States; and because the law under which said appraisement and assessment purport to be made, and the acts aforesaid, were repealed before the said appraisement and assessment; and because the United States is a sovereign government, and its property, and property coming to it, is not subject to the provisions of said acts or the taxing power of the State of New York.

Dated Riverhead, July 19, 1893.

60 Yours, &c., JAMES H. TUTHILL,
Attorney for the Executor, Riverhead, N. Y.

To JOSEPH M. BELFORD, Esq.,
The Clerk of the Surrogate's Court, Suffolk County.
T. M. GRIFFING, Esq.,
Attorney for the County Treasurer of Suffolk County, and for Hon. Frank Campbell, the State Comptroller.

16 At a surrogate's court held in and for the county of Suf- 61
folk, at the surrogate's office in Riverhead, on the 5th day of September, 1893.

Present, Nathan D. Petty, surrogate.

In the matter of the appraisal for taxation of the estate of William 62
W. Merriam, deceased.

The United States of America and Clifford B. Ackerly, the executor, having appealed to the surrogate of Suffolk County from the appraisement made in the above-entitled matter by Usher B. Howell, 63
appraiser, and from the assessment and determination of tax made thereon, as appears by order made by said surrogate, dated May 22, 1893, and the matter coming on to be heard upon the said appeal; after hearing Jesse Johnson, the district attorney for the eastern district of New York, for the said the United States of America, and James H. Tuthill and George F. Stackpole, for the said executor, appellants, and Timothy M. Griffing, for J. Henry Perkins, county treasurer of Suffolk County, respondent; 64

It is decreed that the said order appealed from be, and the same is hereby, in all things affirmed, with cost to all parties out of the estate.

NATHAN D. PETTY, *Surrogate.*

17 At a surrogate's court of the county of Suffolk, held at 65
the court-house in Riverhead on the fifth day of September, 1893.

Present, Hon. Nathan D. Petty, surrogate.

In the matter of the appraisal for taxation of the estate of William 66
W. Merriam, deceased.

A decree bearing date the 22d day of May, 1893, assessing and fixing a tax, having been made in the above-entitled matter by Hon. Nathan D. Petty, the surrogate of the county of Suffolk, wherein and whereby it was, among other things, ordered that the tax liable to be paid by the United States of America, the sole legatee, is $3,964.23; and the United States of America, appearing by Jesse Johnson, the district attorney for the eastern district of New York, and Clifford 67
B. Ackerly, appearing by James H. Tuthill and George F. Stackpole, and on such order, and on the proceedings therein recited, and on the will of the said decedent, the said United States of America, having duly moved that the said decree or order be vacated and set aside, on the ground that there is no jurisdiction or authority to impose or assess any tax or any collateral inheritance tax in this matter, the sole legatee being the United States of America; and it appearing to the court that the United States of America is the sole legatee under said 68
will, and that all the property of the said decedent on which the tax is assessed by said order was properly devised to the United States of America, and the said United States of America (the said executor

appearing as aforesaid) having been heard in favor of said motion, and J. Henry Perkins, county treasurer of Suffolk County, having been heard in opposition thereto by Timothy M. Griffing, his counsel, and due deliberation having been had,

69 18 It is ordered that the said motion be, and the same hereby is, denied, with ten dollars costs.

NATHAN D. PETTY, *Surrogate.*

Surrogate's court, Suffolk County.

70 In the matter of the appraisal for taxation of the estate of William W. Merriam, deceased.

Please take notice the United States of America hereby appeals to the general term of the Supreme Court from the order made herein bearing date the 5th day of September, 1893, affirming an order heretofore made herein dated on the 22d day of May, 1893. And 71 the United States of America also hereby appeals from an order made herein bearing date the 5th day of September, 1893, denying the motion that the decree fixing a tax, made herein, dated the 22d day of May, 1893, be vacated and set aside. And the said United States of America hereby appeals from each and every part of said order.

Dated September 5th, 1893.

JESSE JOHNSON,
District Attorney, and Attorney for the United States of America.

72 To Hon. NATHAN D. PETTY,
Surrogate of Suffolk County.

O. T. FANNING, Esq.,
County Clerk of the County of Suffolk.

TIMOTHY M. GRIFFING, Esq.,
EDWARD HASSETT, Esq.,
Attorneys for the County Treasurer of Suffolk County.

JAMES H. TUTHILL and
JAMES F. STACKPOLE, Esqs.,
Attorneys for Clifford B. Ackerly.

73 19 Surrogate's court, Suffolk County.

74 In the matter of the appraisal for taxation of the estate of William W. Merriam, deceased.

Please take notice that Clifford B. Ackerly, the executor of the will of the said William W. Merriam, deceased, hereby appeals to the general term of the Supreme Court from the order made herein bearing date the 5th day of September, 1893, affirming an order hereto-

fore made herein on the 22d day of May, 1893, and the said executor appeals from each and every part of said order.

Dated September 5, 1893.

JAMES H. TUTHILL,
Attorney for said Executor.

To Hon. NATHAN D. PETTY,
Surrogate of Suffolk County.

O. T. FANNING, Esq.,
County Clerk of Suffolk County.

TIMOTHY M. GRIFFING, Esq.,
EDWARD HASSETT, Esq.,
Attorneys for County Treasurer of Suffolk County.

JESSE JOHNSON, Esq.,
District Attorney, and Attorney for the United States of America.

20 Surrogate's court, Suffolk County.

In the matter of the taxation of the estate devised by William W. Merriam, deceased.

SUFFOLK COUNTY, *ss:*

James H. Tuthill, of said county, attorney for the executor of the said deceased, being duly sworn, says that he is informed by the surrogate of Suffolk County that no opinion was delivered on the confirmation of the order fixing the tax in this matter, nor on denying the motion to set aside the proceedings in this matter.

JAMES H. TUTHILL.

Sworn to before me this 9th day of September, 1893.

NATHAN D. PETTY,
Notary Public, Suffolk County, N. Y.

21 At a general term of the supreme court held in and for the second judicial department, at the court-house in the city of Brooklyn, on the first day of December, 1893.

Present, Hon. J. F. Barnard, P. J., Hon. J. O. Dykman, Hon. C. E. Pratt, justices.

In the matter of the estate of William W. Merriam, deceased.

The appeal from the order of the surrogate's court of Suffolk County, entered herein, having heretofore been brought on for argument before this court, now, after hearing counsel for the respective

parties and due deliberation having been had thereon, it is ordered that *that* the said orders be, and the same are, affirmed, with costs.

Enter C. E. P.

84 J. S. C.

Enter in Suffolk Co.,

JOHN COTTIER, *Clerk.*

85 22 Supreme court, Suffolk County.

86 In the matter of the appraisal for taxation of the estate of William W. Merriam, deceased. Judgment, December 18, 1893.

The United States of America and Clifford B. Ackerly, the executor of the will of the said William W. Merriam, deceased, having appealed to the general term of this court from the order made herein by the surrogate of Suffolk County on the 5th day of September, 1893,
87 affirming an order made herein by the surrogate's court of Suffolk County on the 22d day of May, 1893, and the United States of America having also appealed from an order made herein on the 5th day of September, 1893, by the said surrogate of Suffolk County, denying the motion that the decree made herein on the 22d day of May, 1893, be vacated and set aside, and the general term having affirmed the order so appealed from with costs, now, on motion of Timothy M. Griffing, attorney for the county treasurer of Suffolk
88 County, it is ordered and adjudged that said county treasurer, respondent, recover of the said United States of America and the said Clifford B. Ackerly, as executor as aforesaid, appellants, the sum of seventy-one 27-100 dollars costs.

ORANGE T. FANNING, *Clerk.*

89 23 Supreme court, Suffolk County.

In the matter of the appraisal for taxation of the estate of William
90 W. Merriam, deceased. Notice of appeal.

GENTLEMEN: Please take notice that the United States of America hereby appeals to the court of appeals from the judgment or order entered herein on the order and direction of the general term of this court on the eighteenth day of December, 1893, affirming an order made
91 herein by the surrogate's court of Suffolk County on the 5th day of September, 1893 (which last-mentioned order affirmed an order made herein by the surrogate of Suffolk County on the 22d day of May, 1893), and also an order made herein on the 5th day of September, 1893, by the said surrogate's court of Suffolk County, denying the motion that the decree made herein on the 22d day of May, 1893, be vacated and set aside and also giving judgment for $71.27. And the
92 United States of America appeals from each and every part of said judgment and orders, and the United States of America in like manner appeals from the order made herein by the general term of this

court dated the 13th day of December, 1893, affirming said orders of the said surrogate's court.

Dated Brooklyn, N. Y., December 30, 1893.

JESSE JOHNSON,
Attorney for the United States of America,
United States Attorney for the Eastern District of New York.

24 To ORANGE T. FANNING, Esq., 93
County Clerk of Suffolk County, N. Y.

TIMOTHY M. GRIFFING, Esq.,
Attorney for the County Treasurer of Suffolk County, N. Y.

EDWARD HASSETT, Esq.,
Attorney for the County Treasurer of Suffolk County, N. Y.

Supreme court, Suffolk County. 94

In the matter of the appraisal for taxation of the estate of William W. Merriam, deceased. 95

GENTLEMEN: Please take notice that Clifford B. Ackerly, the executor of the will of the said William W. Merriam, deceased, hereby appeals to the court of appeals from the judgment or order entered herein on the order and direction of the general term of this 96 court on the 18th day of December, 1893, affirming an order made herein by the surrogate's court of Suffolk County on the 5th day of September, 1893, which last-mentioned order affirmed an order made herein by the surrogate of Suffolk County on the 22d day of May, 1893. And the said Clifford B. Ackerly, as executor as aforesaid, appeals from each and every part of said judgment and order, and in like manner appeals from the order made herein by the general
25 term of this court dated the 13th day of December, 1893, 97 affirming said orders of the said surrogate's court.

Dated December 30, 1893.

GEORGE F. STACKPOLE,
Attorney for said Executor.

To ORANGE T. FANNING, Esq.,
County Clerk of Suffolk County, N. Y.

TIMOTHY M. GRIFFING, Esq.,
EDWARD HASSETT, Esq.,
Attorneys for County Treasurer of Suffolk County, N. Y. 98

JESSE JOHNSON, Esq.,
District Attorney and Attorney for the United States of America.

STATE OF NEW YORK,
County of Suffolk, Clerk's Office, ss:

I, Orange T. Fanning, clerk of the county of Suffolk and the 99 courts of record therein, do hereby certify that the foregoing are correct copies of the order appealed from, the judgment roll, and notice

of appeal herein, the originals whereof are on file in the clerk's office in Suffolk County, and of the whole thereof and the indorsement thereof.

In witness whereof I have hereunto set my hand and affixed the
100 seal of the said county and said court the 27th day of January, 1894.

[L. S.] ORANGE T. FANNING, *Clerk.*

26 COURT OF APPEALS,

State of New York, ss:

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the sixth day of March, in the year of our Lord one thousand eight hundred and ninety-four, before the judges of said court.

Witness, the Hon. Charles Andrews, chief judge, presiding. Gorham Parks, clerk. Remittitur March 6th, 1894.

In the matter of the appraisal for taxation of the estate of William W. Merriam, deceased.

Be it remembered that on the 19th day of February, in the year of our Lord one thousand eight hundred and ninety-four, the United States of America and Clifford B. Ackerly, as exr., etc., the appellant in this
27 action, came here into the court of appeals, by Jesse Johnson, U. S. dist. atty., and George F. Stackpole, their attorneys, and filed in the said court a notice of appeal and return thereto from the order of the general term of the supreme court; and the county treasurer of Suffolk County, the respondent in said action, afterwards appeared in said court of appeals, by T. M. Griffing and Edward Hassett, his attorneys, which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed; whereupon the said court of appeals, having heard this cause argued by Messrs. Jesse Johnson, U. S. dist. atty.; Charles Duane Baker, of counsel for the appellants, and by Mr. Edward Hassett, of counsel for the respondent, and, after due deliberation had thereon, did order and adjudge that the order of the general term of the supreme court, appealed from in this proceeding to this court, be, and the
28 same is hereby, affirmed with costs; and it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said supreme court, there to be proceeded upon according to law; therefore it is considered that the said order be affirmed, with costs, as aforesaid, and hereupon, as well as the notice of appeal snd return thereto aforesaid, as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

GORHAM PARKS,
Clerk of the Court of Appeals of the State of New York.
COURT OF APPEALS, CLERK'S OFFICE,
Albany, March 6th, 1894.

I hereby certify that the preceding record contains a correct
29 transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

GORHAM PARKS, *Clerk.*

SUFFOLK COUNTY CLERK'S OFFICE, *ss:*

I, Orange T. Fanning, clerk of said county and clerk of the supreme court of the State of New York, in and for said county (said court being a court of record), do hereby certify that I have compared the annexed copy remittur in re Merriam with the original filed in this office March 31, 1894, and that it is a just and true copy of such original and of the whole thereof.

Witness my hand and the seal of said county, at Riverhead, N. Y., this 6th day of June, 1894.

[SEAL.] ORANGE T. FANNING, *Clerk.*

30 Supreme court, Suffolk County.

In the matter of the appraisal for taxation of the estate of William W. Merriam, deceased. Judgment, March 31, 1894.

Clifford B. Ackerly, the executor of the will of William W. Merriam, and the United States of America, having appealed to the court of appeals from the judgment order heretofore, and on the 18th day of December, 1893, entered in the above matter, affirming an order made herein to the surrogate's court of Suffolk county, on the 5th day of September, 1893, and said court of appeals having heard the said appeal, and ordered and adjudged that said order so appealed from be affirmed with costs, and the remittitur from said court of appeals having been duly filed in this court, and an order duly entered thereon making the judgment of the court of appeals the judgment of this court, and directing judgment to be entered herein as hereinafter adjudged with costs, and the plaintiff's costs
31 having been taxed at the sum hereinafter stated, now upon motion of Timothy M. Griffing, attorney for respondent, it is adjudged that the judgment hereinafter mentioned, entered herein on the 18th day of December, 1893, be and the same is hereby affirmed. And it is further adjudged that the respondent, the county treasurer of Suffolk County, recover from and against the appellants the sum of one hundred and two dollars and eighty-nine cents, the amount of their costs herein as taxed.

ORANGE T. FANNING, *Clerk.*

SUFFOLK COUNTY, CLERK'S OFFICE, *ss:*

I, Orange T. Fanning, clerk of said county, and clerk of the supreme court of the State of New York, in and for said county (said court being a court of record), do hereby certify that I have compared the annexed copy judgment in re Merriam with the original judgment filed in this office March 31, 1894, and that it is a just and true copy of such judgment and of the whole thereof.

Witness my hand and the seal of said county, at Riverhead, N. Y., this 6th day of June, 1894.

[SEAL.] ORANGE T. FANNING, *Clerk.*

32 In the matter of the appraisal for taxation of the estate of William M. Merriam, deceased. Court of appeals. Filed March 6, 1894.

1. TAXES—COLLATERAL INHERITANCE.

A bequest to the United States is subject to the tax imposed by § 1, chap. 399 of 1892.

2. SAME.

The right to succession to stocks of foreign corporations, held by an executor as such, is subject to the payment of the tax imposed by this act.

Appeal from order of the general term of the supreme court in the second judicial department, made December 1, 1883, which affirmed an order of the surrogate's court of Suffolk County, affirming an order of said court assessing and fixing the collateral inheritance tax due from the estate of William W. Merriam, deceased.

The facts, so far as material, are stated in the opinion.

Jesse Johnson for app'lt, Charles Duane Baker for resp't.

BARTLETT, J.: This is an appeal from an order of the general term of the supreme court in the second department, affirming to several orders of the surrogate's court of Suffolk County. Two questions are raised by this appeal: First, whether or not a bequest of money to the United States is liable to pay the inheritance tax imposed by the laws of this State; second, can such a tax be levied on stock of a foreign corporation which was the property of the decedent at the time of his death, the proceeds of which pass to the United States. The courts below have answered both of the questions in the affirmative. The testator died January 30, 1889, and the tax was assessed February 16, 1893, on the personal estate bequeathed to the United States. At that time chapter 399, laws of 1892, entitled "An act in relation to taxable transfers of property," was in force and had repealed all previous acts, subject to a saving clause contained in section twenty-four of said act, providing, in substance, that the repeal should not affect or impair any act done, or right accruing, accrued, or acquired, or liability, penalty, forfeiture, or punishment incurred, prior to the passage of thi' act. § 25 of said act also provided that "the provisions of this act, so far as they are
33 substantially the same as those of laws existing April 30, 1892, shall be construed as a continuation of such laws, modified or amended according to the language employed in this act, and not as new enactments." So that when this tax was assessed it was under the said law of 1892 construed as amending the previous statutes.

§ 1 of said act reads in part as follows: "A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over * * * to persons or corporations not exempt by law from taxation on real or personal property," etc.

In the view we take of this case, the legacy to the United States is subject to the tax, whether we consider the assessment as made under the language of the law of 1892 or of the various statutes it amends and repeals. Whether the transfer is "to any person or persons, or to a body politic or corporate," in the words of the earlier statutes, we are of opinion the language includes the Government of the United States. For the purpose of receiving legacies and for many other purposes the United States is to be regarded as a body politic and corporate. In The United States v. Maurice et al. (2 Brockenbrough's Reports, 96), Chief Justice

Marshall says, at page 109, "The United States is a Government, and, consequently, a body politic and corporate, capable of attaining the objects for which it was created by the means which are necessary for their attainment. This great corporation was ordained and established by the American people, and endowed by them with great powers for important purposes."

The United States being capable of taking this legacy, it remains to consider whether there is any reason why this tax should not be collected. This court has recently decided that this tax is not imposed on property, but on the right of succession under a will or devolution in case of intestacy. (In the matter of the estate of James T. Swift, 137 N. Y., 77; 50 St. Rep., 81.)

This tax, in effect, limits the power of testamentary disposition, and legate's and devisees take their bequests and devises subject to this tax imposed upon the succession of property. This view eliminates from the case the point urged by the appellant that to collect this tax would be in violation of the well-established rule that the State can not tax the property of the United States. Assuming this legacy invested on the United States at the moment of testator's death, yet in contemplation of the law the tax was fixed on the succession at the same instant of time. This is not a tax imposed by the State on property of the United States. The property that vests in the United States under this will is the net amount of its legacy after the succession tax is paid. The appellant urges that the United States, if regarded as a corporation, is, under the act in relation to the taxable transfers of property, a corporation exempt from taxation.

This court has held that the provisions exempting the religious, charitable, and other corporations named in the inheritance-tax acts apply only to domestic corporations. (Matter of estate of Prime, 136 N. Y., 34 347; 49 St. Rep., 658.) It is suggested that the United States is to be regarded as a domestic corporation, so far as the State of New York is concerned. We think this contention has no support in reason or authority. A domestic corporation is the creature of this State, created by its legislature, or located here and created by or under laws of the United States. (Code of Civil Procedure, § 3343, sub. 18.) The United States is a Government and body politic and corporate, ordained and established by the American people, acting through the sovereignty of all the States.

There remains one other question in this case as presented by the briefs of appellant: Whether the stocks of foreign corporations held by the executor is to be regarded as part of the estate, subject to the tax now under consideration. The tax being imposed on the right of succession and not on the property, as before remarked, this question must be answered in the affirmative. To compute the succession tax on the total personal estate is not imposing a tax on the stocks of foreign corporations constituting a part of that estate.

The orders appealed from are affirmed with costs.

All concur.

34½ (Indorsed:) In the matter of the appraisal for taxation of the estate of William W. Merriam, deceased. Copy. Opinion. Bartlett, J. Court of appeals, State of New York.

35 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the supreme court of the State of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in said supreme court, upon a remittitur from the court of appeals of the State of New York, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, entitled: In the matter of the appraisal for taxation of the estate of William W. Merriam, deceased, wherein the United States of America and Clifford B. Ackerly, executor of William W. Merriam, deceased, were appellants, and J. Henry Perkins, county treasurer of Suffolk County, New York, was respondent in said court of appeals, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a
36 treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said The United States of America and Clifford B. Ackerly, executor of William W. Merriam, deceased, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 21st day of June, in the year of our Lord one thousand eight hundred and ninety-four.

[SEAL.] JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by:
JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

(Indorsed:) Writ in re Merriam will case. Filed June 26, 1894, 4 p. m. O. T. Fan.

37 UNITED STATES OF AMERICA, *ss:*

To J. Henry Perkins, county treasurer of Suffolk County, New York, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of New York, wherein The United States of America, and Clifford B. Ackerly, executor of William W. Merriam, deceased, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John M. Harlan, Justice of the Supreme Court of the United States, this 21st day of June, in the year of our Lord one thousand eight hundred and ninety-four.

JOHN M. HARLAN,
Justice Sup. Ct. U. S.

38 On this 30 day of June, in the year of our Lord one thousand eight hundred and ninety-four, personally appeared before me, the subscriber, Geo. F. Stackpole, and makes oath that he delivered a true copy of the within citation to Albert M. Darling, county treasurer of Suffolk County, New York, and J. Henry Perkins, formerly county treasurer of Suffolk County, N. Y.

GEO. F. STACKPOLE.

Sworn to and subscribed the 30 day of June, A. D. 1894.

[SEAL.] ERNEST W. TOOKER,
Notary Public.

STATE OF NEW YORK,
County of Suffolk, ss:

I, Orange T. Fanning, clerk of the county of Suffolk, and clerk of the supreme court of the State of New York, in and for said county (said court being a court of record), do hereby certify that Ernest W. Tooker, before whom the annexed deposition was taken, was, at the time of the taking of the same a notary public of the State of New York in and for the said county, dwelling in said county, commissioned and sworn, and duly authorized to take the same; and further that I am well acquainted with the handwriting of such notary and verily believe the signature to said deposition to be genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said county and court this 11 day of July, 1894.

[SEAL.] ORANGE T. FANNING, *Clerk.*

39 SUFFOLK COUNTY,
Clerk's Office, ss:

I, Orange T. Fanning, clerk of said county, and clerk of the supreme court of the State of New York, in and for said county (said court being a court of record), do hereby certify that I have compared the foregoing